

Animal Law – A need for reform **Ruth Hatten, Legal Counsel, Voiceless**

Introduction

Voiceless is an independent non-profit think tank dedicated to alleviating the suffering of animals in Australia. Established in 2004 by father and daughter team, Brian Sherman AM and Ondine Sherman, Voiceless:

- Creates and fosters networks of leading lawyers, politicians and academics to influence law and public policy;
- Conducts high quality research and analysis of animal industries, exposing legalised cruelty and promoting informed debate;
- Creates a groundswell for social change by building and fortifying the Australian animal protection movement with select Grants and Prizes; and
- Informs consumers and empowers them to make animal-friendly choices.

Voiceless envisions a world in which animals are treated with respect and compassion.

Voiceless's mission is to bring the institutionalised suffering of animals to the forefront of Australia's agenda; ensuring that animal protection is the next great social justice movement.

Our clients include pigs... chickens... sheep... cows... and kangaroos.

Some of the work that Voiceless carries out includes:

- administering voiceless law talk, a forum for qualified lawyers and law student
- producing reports on animal industries
- holding an annual animal law lecture series
- forming relationships with law firms and law schools
- funding projects
- investing in scholarship and legal education
- building a social justice movement

Now, getting down to business, I am here today to speak to you about animal welfare as a contemporary law reform issue. Animal welfare is a broad area and the law surrounding animal welfare, coined as animal law, is a major component.

A question that a lot of people ask when they are part of a discussion concerning animal law is....

What is animal law?

Animal law affects everything we do to animals in society; from medical research and food production to entertainment, the wild and our local communities. Due to an absence in the Constitution of any express allocation of power to the Commonwealth where animals are concerned, the state and territory governments have assumed responsibility for enacting and enforcing animal welfare laws. These laws purport to 'protect' animals but unfortunately, as I will discuss later, they often fail. As such, animal law is an area of law that is in need of reform.

Why animal law?

Why animal law? Just have a look at these images....

Animals are abandoned, mistreated and killed. They have insufficient legal protection. They have no voice. The laws that exist to protect animals are in dire need of change.

Key issues

The issues that make up animal law are vast. They include:

- Animals as property
- Animal welfare legislation
- Animals used in agriculture
- Gathering evidence for cruelty prosecutions
- Labelling
- Live animal export
- Intensive livestock production and climate change
- Animals used for scientific purposes
- Animals used for entertainment
- Pets
- Pests
- Fish and crustaceans
- Wild animals

- Standing
- Free speech

Due to the vastness of the issues, I will only be concentrating on four of these issues today – animals as property, animal welfare legislation, animals used in agriculture and standing.

Animals as property

The classification of animals as property is fundamental to the abuse and exploitation bestowed on them. By being classified as property, animals are capable of being owned, used, controlled, disposed of and excluded from others; just like your car, your dining room table, your house. They have no standing in their own right. As Gary Francione, distinguished professor of law, states - animals are *'as a matter of law, solely means to human ends. As such, their value is measured in terms of their usefulness to humans, and not in terms of their own interests'*¹.

Animals are sentient beings. They feel pain, sorrow, frustration, stress, hunger, love, joy, loneliness and depression. They are not inanimate objects. As such, a major argument of animal lawyers is that animals should be given legal personhood. Is this impossible? No. Corporations and ships are legal persons. Slaves used to be regarded as property but have since gained personhood. So too were women and their status has also changed. In fact, in the EU, the concept of animal sentience has been written into the basic law of the European Union. The legally-binding Protocol annexed to the Treaty of Amsterdam recognises that animals are 'sentient beings', and requires the EU and its Member States to 'pay full regard to the welfare requirements of animals.'² Unfortunately, the Treaty provides no legal basis for the introduction of legislation specifically intended to improve the welfare of animals³. Rather, it obliges the EU to pay full regard to the welfare requirements of animals when formulating and implementing Community policies⁴, for example a research project into the welfare implications of changes in production systems for laying hens.

Animals' classification as property is beneficial to humans and it's why the classification remains - *' "property" has value solely as a means to an end, whereas "people" are ends in themselves ... the value of non-human animals is measured only in terms of their usefulness to humans, not in terms of any interest they may have in their own right'*⁵.

One benefit to humans is financial. Production of animals for meat means billions of dollars for industry. It is one reason why Government is reluctant to further interfere with property

¹ Francione, GL (1995) *Animals, Property, and the Law*, Temple University Press, Philadelphia, p24.

² http://www.ciwf.org.uk/animal_sentience/policy_and_culture/default.aspx

³ http://www.eurogroupforanimals.org/legislation/legislation_more1.htm

⁴ http://ec.europa.eu/food/animal/welfare/research/index_en.htm

⁵ St Pierre, DW (1998) 'The Transition from Property to People: The road to the recognition of rights for non-human animals' 9 *Hastings Women's Law Journal* 255 at 257-259.

rights by altering the status of animals. If animals were no longer classified as property, factory farming would not exist.

Animal welfare legislation

The laws that exist currently are:

- *Animal Welfare Act 1992* (ACT)
- *Animal Welfare Act 1999* (NT)
- *Prevention of Cruelty to Animals Act 1979* (NSW)
- *Animal Care & Protection Act 2001* (QLD)
- *Animal Welfare Act 1985* (SA)
- *Animal Welfare Act 1993* (TAS)
- *Prevention of Cruelty to Animals Act 1986* (VIC)
- *Animal Welfare Act 2002* (WA)

Intent and outcome of the legislation

Animal welfare legislation has been enacted to prohibit animal cruelty, encourage proper treatment of animals and to promote animal welfare. On its face, the legislation does appear to protect animals. Unfortunately, it falls far short of achieving its objectives.

Examples of how the legislation fails include:

- Inconsistencies which result in prohibitions on ill-treatment of some types of animals and not others.
- Principles of 'unnecessary', 'unreasonable' and 'unjustifiable' suffering and 'inhumane treatment'.
- National inconsistencies in definitions and cruelty provisions.
- Exemption of certain types of animals from cruelty provisions.
- Low penalties and the reluctance by the Court to impose tougher penalties.
- Difficulties with enforcement.

Inconsistencies on prohibitions Firstly, there are inconsistencies throughout the legislation which result in procedures that are generally prohibited, being permissible for animals that are used by industry, for example, in agriculture, research and entertainment. As a result, a cat will receive better protection than a pig. At the same time, a cat will be better protected as a companion animal rather than a subject of scientific research. A direct example of how this occurs in the legislation is section 9 of the *Prevention of Cruelty to Animals Act* in NSW. Section 9(1) provides that '*a person in charge of an animal which is confined shall not fail to provide the animal with adequate exercise*'. However, section 9(1A) limits the scope of this

clause by providing that subsection (1) does not apply to a person in charge of an animal if the animal is:

- (a) *A stock animal other than a horse; or*
- (b) *An animal of a species which is usually kept in captivity by means of a cage.*

Section 9(1A) seriously undermines the welfare benefit of the provision. Animals kept in cages are generally the animals who experience the most suffering and, accordingly, they are the animals who require the most protection. In this instance, the NSW legislation protects the animals that need the least protection and fails to protect those that require the most.

Another inconsistency exists in relation to codes of practice. These codes provide minimum standards about specific types of animal use, for example, agriculture and entertainment. They operate alongside the animal welfare legislation but are predominantly unenforceable. I will be discussing the application of the Federal Model Codes of Practice for animal welfare in more detail shortly but in the meantime would like to draw your attention to an inconsistency created by the application of such codes. That inconsistency is that if there is a contradiction between the legislation and the codes, the codes will prevail. This results in industry animals being afforded a lesser protection than companion animals.

'Unnecessary', 'unreasonable' and 'unjustifiable' suffering Secondly, the legislation contains principles of 'unnecessary', 'unreasonable' and 'unjustifiable' suffering. An example of these terms is contained in section 18 of the Qld *Animal Care and Protection Act*. The section provides that *'a person is taken to be cruel to an animal if the person ... causes it pain that, in the circumstances, ... is unjustifiable, unnecessary or unreasonable'*. Other examples within this section include that:

'a person is taken to be cruel to an animal if the person ... kills it in a way that... causes it to die in unreasonable pain'

'a person is taken to be cruel to an animal if the person ... unjustifiably, unnecessarily or unreasonably injures or wounds it or overcrowds or overloads it'

These terms create problems due to the difficulty in interpreting what is necessary, reasonable and justifiable. Is it necessary to castrate a newborn pig without pain relief? Is it reasonable to confine a hen to a cage that is not much bigger than herself and that prevents her from carrying out her normal activities? Is it justifiable to slaughter a days old calf because he is not useful to industry?

Unfortunately, there are not many cases that consider the interpretation of *'unnecessary', 'unreasonable' and 'unjustifiable'*. This is due to the majority of offenders pleading guilty to charges of animal cruelty in which instance, the judge or magistrate is not required to consider whether the suffering was *'unnecessary'*.

One case that does, which is also the leading case on this issue, is the Western Australian live export case, *Department of Regional Government and Local Government v Emanuel Exports Pty Ltd et al*⁶. This case concerned two directors charged for cruelty under the WA *Animal Welfare Act* for transporting and confining sheep for live export in a way that was likely to cause 'unnecessary harm'. The relevant issue in this case was whether it was necessary to export fat sheep despite industry knowledge that such sheep faced a higher mortality rate from starvation or salmonellosis at the time of year that the trade occurred.

Magistrate Crawford, citing the English leading case, *Ford v Wiley*, said that '*the beneficial or useful ends sought to be attained must be reasonably proportionate to the extent of suffering caused, and in no case can substantial suffering be inflicted, unless necessity for its infliction can reasonably be said to exist*'.

Magistrate Crawford held that the harm caused to the sheep was unnecessary as:

1. There was no evidence that the failure to supply fat sheep in November would have jeopardised the whole shipment; and
2. The [prospect of] commercial gain must be balanced against the likelihood of pain, injury or death to the relevant sheep being shipped in the second half of the year.

However, despite the cruelty offence being made out, the offence was nullified and the accused were acquitted. Reason for the acquittal was due to an operational consistency between the Commonwealth legislative scheme regulating live export and the *Animal Welfare Act 2002 (WA)* under s109 of the Commonwealth Constitution. (This section renders state law invalid to the extent they are inconsistent with Commonwealth laws). Essentially, the Court found that the Commonwealth scheme expressly permitted the shipment in this instance.

National inconsistencies Inconsistencies exist across the board when it comes to the interpretation of such terms as 'animal', 'animal welfare', 'cruelty' and 'aggravated cruelty'.

Animal The Oxford dictionary defines 'animal' as '*any such living organism other than a human being*'. Australian animal welfare legislation defines 'animal' in numerous ways and in all jurisdictions, except for South Australia, there is a clear distinction between animals and humans. And unlike the Oxford dictionary definition, not all living organisms are considered animals under the legislation.

Example - NSW definition.

The ACT definition is very similar to the NSW definition.

NT differs to NSW and the ACT in respect of fish, providing that only a 'live fish in captivity or dependent on a person for food' is an animal.

⁶ (unreported, Perth Magistrates Court, Magistrate Crawford, 8 February 2008)

Qld has a much more detailed definition which specifically includes pre-natal or young animals.

SA, Tas and WA have the shortest of the definitions.

The Victorian definition has an emphasis on adult animals, with the only young animals included in the definition being (a)(ii) any reptile, bird or other mammal that have passed the normal mid-point of gestation or incubation.

Stock animal Some Acts also define specific animals, such as '*stock animals*' or '*farm animals*'. The NSW and NT Acts both define 'stock animals', while the Vic Act defines 'farm animals'.

While the Qld, SA and Tas Acts don't specify a specific definition for 'stock animals' or 'farm animals', they do contain references throughout to livestock, cattle, horses etc.

Generally, animals are defined as 'stock animals' or 'farm animals' in order to exclude them from the ambit of the legislation. For example, provisions in the NSW and NT Acts exclude 'stock' from the requirement that all animals receive adequate exercise. This exemption allows animals such as pigs, chickens and cows to remain confined indoors for all of their productive lives.

What is animal cruelty? All jurisdictions in Australia have adopted anti-cruelty prohibitions. Some have also adopted a prohibition against aggravated cruelty.

As intimated earlier, inconsistencies exist due to the various ways in which each prohibition is drafted. Generally speaking, an act of cruelty will entail the causing of pain, suffering and inhumane or ill-treatment. Some jurisdictions, like NSW and ACT, have a very broad anti-cruelty prohibition which fails to provide clarification of what constitutes an act of cruelty. The most detailed, and therefore helpful, provisions are contained in the Queensland, Tasmanian and Victorian legislation. Again, some jurisdictions have adopted codes of practice which restrict the application of the cruelty provisions.

What is aggravated cruelty? The aggravated cruelty provisions, which exist only in NSW, ACT, SA, Tasmania and Victoria, generally apply where a person causes death or serious injury to an animal. For an offence of aggravated cruelty to be made out in ACT and SA, there also has to be intent or recklessness in causing the act.

Exemptions As touched on earlier, there are various exemptions that appear throughout animal welfare legislation. Farm animals are directly excluded and there are a number of shields that protect potential offenders from a charge of animal cruelty.

These shields and exclusions are evidenced by the following:

- references to 'farm animals' or 'stock animals';

- references to the Model Codes of Practice – which have the effect of exempting a potential offender from an offence of animal cruelty if they are in compliance with a code;
- by the use of phrases such as ‘accepted animal husbandry practice’;
- the requirement to provide exercise not applying to stock animals or animals kept in a cage;
- certain animals are exempt from provisions that prohibit painful procedures and mutilations - for example, it is legal to clip a piglets’ teeth, to castrate piglets, sheep and cattle, to tail dock piglets, to dehorn cattle and goats. The list is endless;
- mutilations such as ear-tagging, branding and castration are justifiable without pain relief where no *unnecessary pain* is caused;
- the allowance of electrical devices on some animals, such as electric stock prods, electric fences and electro-ejaculators;
- the exception to provide sufficient food, water or shelter where an animal is one that is normally left to fend for itself⁷.

Examples of some other exemptions include the exemption of:

- a) ‘feral’ or ‘pest’ animals, provided the act is done in a way that causes as little pain as is reasonable⁸;
- b) animals for food who are slaughtered under a religious faith⁹;
- c) animals supplied by or to a prescribed entity or an inspector of the State¹⁰.

Magistrate Musk of the Fremantle Magistrates Court made an interesting observation in the case of *Department of Local Government and Regional Development v Gregory Keith Dawson* a few years ago. Her observation was that:

‘A lot more is tolerated towards animals in business and industry than would otherwise be tolerated say towards a domestic pet. For example, it’s difficult to imagine any circumstances where the use of a cattle prod on a pet dog would ever be tolerated by anybody in society but it’s a different standard, with respect to industry and business ... [and] ... a lot more people find aspects of industry cruel but the politics of law doesn’t’.

Penalties Penalties for breaching animal welfare legislation vary across the jurisdictions. Penalties include fines, imprisonment, forfeiture of animals, bans on ownership and community service. While fines may be ordered up to \$100,000 and imprisonment up to 2 years, the penalties ordered are generally quite lenient.

The following slides set out the penalties that are currently in force. As you can see, Queensland is the leading jurisdiction when it comes to penalties. This will be further

⁷ *Animal Welfare Act 2002* (WA) section 26

⁸ *Animal Care and Protection Act 2001* (Qld) section 42

⁹ *Animal Care and Protection Act 2001* (Qld) section 45

¹⁰ *Animal Care and Protection Act 2001* (Qld) section 47

improved when Queensland's Criminal Code is amended next year to create a new serious animal cruelty offence carrying a maximum sentence of seven years imprisonment.

The ACT Greens have also recently put forward a bill seeking to double the current penalties for animal cruelty and aggravated cruelty.

Despite the strength of some of these penalties, time and time again the judiciary hands down penalties that are relatively moderate. The most common sentence is a fine, one of the least severe penalties, the other being an order for community service.

Just to give you an idea, some recent examples of cases where the judiciary has handed down moderate sentences include:

- This week, a Brisbane man was fined \$3,000 for drowning his neighbour's cat in a wheelie bin after trapping it. He was also ordered to pay court costs of \$1,500 and \$495 to the cat's owner for restitution. No conviction was recorded.¹¹
- Last week, a Brisbane law graduate was ordered to perform 120 hours of community service for kicking an ibis to death. No conviction was recorded.¹²
- A Townsville stockman was sentenced to two months jail suspended for 15 months late last year for flogging a horse to death. The sentence was appealed earlier this month but the appeal failed.¹³
- A Freshwater Creek farmer was fined \$1,000 for failing to have one of his cows treated for a painful, malignant tumour on his eye. No conviction was recorded.¹⁴
- Around Christmas last year, two Toowoomba men tethered and dragged Elf, the Shetland pony, behind their car causing Elf to suffer horrific injuries. One was sentenced to two years probation, the other received a three month wholly suspended jail term. No conviction was recorded.
- A former Tasmanian dairy farmer was fined \$2,500 for admitting to cutting the tails off 20 cows using an angle grinder. His fine amounts to \$125 for each act of cruelty.

On a more positive note, a South Australian man was sentenced to five months jail this January for slitting the throat of his ex-girlfriend's dog. The Magistrate said he could not suspend the jail term because the offence was too serious.

Clearly, these sentences do not give effect to the intent of animal welfare legislation, that is, to prohibit animal cruelty, encourage proper treatment of animals and to promote animal welfare.

¹¹ Donald Carrington, Sandgate Magistrates Court, 21 March 2011

¹² Quay Wee Meng, Brisbane Magistrates Court, 16 March 2011

¹³ Hugh Meixner, Townsville Magistrates Court, 17 March 2011

¹⁴ Geoffrey Larcombe, Geelong Magistrates Court, 14 March 2011

Further, inappropriate sentencing shows a complete disregard for animals and their protection. It reinforces animals as property and it completely ignores evidence of links between animal cruelty and community-based violence.

Difficulties with enforcement The majority of the difficulties with enforcement stem from the manner by which the power to enforce animal welfare legislation is granted. The power is granted to:

- State government departments;
- the RSPCA; and
- the police.

Powers granted include the power to investigate breaches of the legislation and the power to enforce compliance with the legislation.

The bulk of enforcement is carried out by the RSPCA. In Queensland, the RSPCA has a Memorandum of Understanding with the Department of Primary Industries concerning livestock animal welfare issues. This results in the Department having responsibility to investigate acts of cruelty against livestock.

Depending on who you speak to, having the RSPCA enforce the legislation is either appropriate or inappropriate. Those who think it is beneficial having RSPCA enforce the legislation think so because of the limited resources of government departments and the police force. The problem with this reasoning is that the RSPCA as a charity also suffers from limited resources and budgetary constraints. There are also various factions between the different RSPCA's which result in conflicting priorities and absence of coordination.

Unfortunately all of the organisations with the power to enforce animal welfare legislation have limited resources and organisational priorities. There is also a conflict of interest between government departments, such as the Department of Primary Industries, and their power to enforce the legislation due to their relationship with agribusiness.

RSPCA National Statistics for the period 2009-2010 show that 53,544 cruelty complaints were investigated by RSPCA nationwide. Of these, 247 prosecutions were brought, 185 of which resulted in convictions. Therefore, 75% of prosecutions resulted in a conviction. This shows that while prosecution rates are very low, conviction rates are quite high. This is good but it must not detract from the high number of cruelty complaints compared with the low number of complaints prosecuted.

An interesting topic of discussion is 'who should enforce animal welfare legislation'. My personal opinion is that there needs to be a separate unit of the police force that deals solely with animal cruelty complaints.

Animals used in agriculture

I would like to start off this section with some quotes -

'The first time I ever entered a battery house I thought it was the entrance to Hell' – Violet Spalding, Founder of Chicken's Liberation

'If slaughterhouses had glass walls, everyone would be vegetarian. We feel better about ourselves and better about the animals, knowing we're not contributing to their pain.' – Linda & Paul McCartney

'The shriek was followed by another, louder and yet more agonizing..for once started upon that journey, the hog never came back. One by one the men hooked up the hogs and slit their throats. There was a line of hogs with squeals and lifeblood ebbing away. Until at last each vanished into a huge vat of boiling water (some still alive). The hogs were so innocent. They came so very trustingly. They were so very human in their protests. They had done nothing to deserve it.' – Upton Sinclair, author of *The Jungle*

'You know, we all oppose animal cruelty. But sometimes we forget that animals on farms suffer and feel pain like all other animals. They, too, deserve to be protected from harm and cruelty.' – Charlotte Ross, actor NYPD Blue

'As we talked of freedom and justice one day for all, we sat down to steaks. I am eating misery, I thought, as I took the first bite. And spit it out.' – Alice Walker, author of *The Colour Purple*

'Animal factories are one more sign of the extent to which our technological capacities have advanced faster than our ethics.' - Peter Singer

Factory farming is institutionalised abuse. As you've heard today, farm animals are excluded from animal welfare legislation. The manner in which farm animals are treated is governed by Federal Model Codes of Practice – Codes which set out the 'minimum standards' for animal welfare; codes that allow mistreatment and mutilation. As with other animals, issues with enforcement abound.

Institutionalised abuse

In Australia, approximately half a billion animals are confined in intensive or 'factory' farms¹⁵. Very rarely do these animals:

- experience natural behaviours such as nesting, perching, dust bathing and digging for roots;
- normal social interactions;

¹⁵ Department of Agriculture, Fisheries and Forestry (2005) *Australian Agriculture and Food Sector Stocktake*, Commonwealth of Australia, Canberra

- bask in the sun, breathe fresh air or feel grass under their feet.

In addition, animals in factory farms are mutilated on a daily basis, in the majority of cases without pain relief. Mutilations include de-beaking, tail-docking, castration, dehorning and teeth clipping.

No longer does the romantic vision of Old MacDonald's Farm exist. Small family farms have been replaced by intensive mechanical and commercial systems with the objective to increase productivity at a minimum cost. Animals unfortunate enough to be raised in these systems are treated as commodities, not the living, breathing sentient beings that they are. They are brought into this world for a reason – to be fattened up and killed for human consumption. As a result of the desire for increased productivity at a minimum cost, animal welfare is quick to fall by the wayside. To treat animals humanely is an expensive operation.

To make matters worse, our laws condone the denial of natural behaviours and the routine mutilation inflicted upon farm animals by way of the following:

- the classification of animals as property;
- the failure to provide adequate protection by the removal of farm animals from the reach of animal welfare legislation and the allowing of cruelty by way of the model codes of practice;
- the unclear parameters of an act needing to be 'unreasonable' 'unnecessary' or 'unjustifiable' for it to amount to cruelty.

Codes of Cruelty

For the past 20 or so years, Federal Model Codes of Practice for Animal Welfare have been in existence. They form a set of Government and industry agreed principles and practices that provide minimum standards, guidelines and information.

The Codes are overseen by the Animal Welfare Committee, a sub-committee of the Animal Welfare and Product Integrity Task Force. The AWC consists of representatives from the Australian Government Department of Agriculture, Fisheries and Forestry and agencies responsible for animal welfare in Australian states and territories. The Codes are said to suggest acceptable livestock welfare outcomes. They are not mandatory. However, all of the Model Codes have been incorporated into regulations in South Australia and therefore within that state alone, they are legally enforceable. Also there are some jurisdictions that have adopted portions of the Codes into their animal welfare legislation which also results in those portions being legally enforceable.

As touched on earlier, the Codes function as significant exceptions to animal welfare legislation and in most jurisdictions, if complied with, they operate as a defence to prosecution under animal welfare legislation.

Also touched on earlier, is the manner by which the Codes promote cruelty rather than prevent it. The Codes entrench factory farming standards for raising and keeping livestock, standards which are inherently cruel and if applied to a cat or a dog would result in the offender being subject to prosecution.

The following are some examples of the way in which the Codes prescribe standards that legalise animal cruelty:

Pig code

- Key standards from the Pig code have been adopted in the *Animal Care and Protection Act 2001* (Qld) and are therefore now enforceable by law in Qld
- *'It is **recommended** that piglets be castrated after two days of age, after they have established their suckling order, and before seven days of age. When pigs 8-21 days are castrated, **appropriate and effective restraint** is necessary'*
- *'Tail docking should be avoided **wherever possible**'*
- *'If aggression between littermates or damage to the sow are a problem, (teeth clipping) **should** be carried out within three days of birth...'*
- *'Nose ringing **should** be avoided. However, this procedure **may need to be performed** as a last resort, to prevent adverse effects to the environment, if pigs are kept on pasture'*
- *'Where it is **necessary** to mark pigs for permanent identification, the ear may be tattooed, tagged, notched or punched, or the body may be tattooed or micro-chip implanted'*
- Adult pigs in stalls – sows 0.6m x 2.2m, boars 0.7m x 2.4m

Domestic poultry code

- *'Upon the occurrence of disease or evidence of behavioural changes such as cannibalism, management practices, including stocking densities **should** be re-evaluated immediately and adjusted accordingly.'*
- *'When using mechanical systems for delivery of food alternative methods of feeding **should** be available. There **should** be enough food on hand, or ready means of obtaining food, in the event of failure of supply.'*
- *'Young birds in brooders **should** be inspected at least twice every 24 hours and action taken to correct deficiencies in husbandry should such occur.'*
- *'Dead and injured birds **should** be removed for disposal or appropriate treatment without delay.'*

- *‘Every effort **should** be made to avoid beak trimming by selecting chickens for reduced feather pecking and cannibalism. The use of housing systems and lighting levels which reduce the tendency for these traits to arise **should** also be used.’*
- *Minimum floor space allowance for caged hens = 550cm², the size of an A4 page*

Cattle code

- *‘Animals in poor condition, in late pregnancy or early lactation, or calves less than one month of age, **should** not be deprived of access to food for periods longer than 24 hours.’*
- *‘The transportation of cattle to and from the feedlot **should** be carried out in accordance with established State codes or the Model Code of Practice for the Welfare of Animals: Land Transport of Cattle.’*
- *‘Cattle pens **should** be maintained such that they are well drained, provide a firm footing and have sufficient area for the cattle to move around freely.’*
- *‘Manure **should** not be allowed to accumulate to the point where reasonably surface drying is delayed after rainfall.’*
- *‘Cattle **should** be protected from extreme adverse weather conditions causing cold stress or heat stress, **as far as practicable**.’*
- *‘Housing for artificially reared calves **should** be hygienic, with adequate ventilation, climate control and lighting.’*
- *‘Sheds, pens, yards, lanes, ramps and other areas where cattle are forced to congregate **should** be constructed and maintained to minimise stress, injury and disease.’*

Standing

A major issue in animal law is the issue of standing. As you have heard today, animals are considered to be property under the law and as such they lack standing. Individuals and organisations who attempt to bring legal actions on behalf of animals are regularly turned away due to their lack of standing.

The only pieces of animal welfare legislation that explicitly express who may commence proceedings on behalf of an animal are the Acts in force in Victoria, NSW and Western Australia. These Acts allow the following to commence proceedings:

- RSPCA NSW¹⁶;
- NSW Animal Welfare League¹⁷;

¹⁶ Prevention of Cruelty to Animals Act 1979 (NSW), section 53

- an inspector¹⁸;
- a police officer¹⁹;
- the Minister or Director of the Department of Primary Industries²⁰;
- a person authorised to file a charge for a cruelty offence and who is a public servant, an officer of a council or a full-time member of the RSPCA²¹;
- the Chief Executive Officer of the Department of Local Government and Regional Development, or an inspector or an officer authorised by the CEO²²

Acts in other jurisdictions are silent on this issue and so it appears that cruelty proceedings may be commenced by individuals in these other jurisdictions provided that there has been interference with a public right.

Under common law, a person has standing if they can show that they have suffered a direct injury or special damage or that they have a special interest in the proceedings. It is difficult for an individual to argue a direct injury or special damage where the damage or injury suffered is that of an animal. In the same vein, it is difficult to argue special interest where the interests generally sought to be protected are those of animals.

The leading Australian case in this area is *Australian Conservation Foundation v Commonwealth*²³. On appeal, it was held that the Australian Conservation Foundation did not have standing to challenge a decision of the Commonwealth to approve the development of a tourist resort.

The Court followed UK authority stating that a person must have a 'special interest' in the subject matter of a decision before they will be entitled to challenge that decision. What amounts to a special interest is 'infinitely various', but would include damage to proprietary, economic, or perhaps social and political interests. The Court held, however, that a 'mere intellectual or emotional concern' or the 'satisfaction of righting a wrong, upholding a principle or winning a contest' was not a sufficient interest. In that case, it was held that the ACF's interest in the environment was a 'mere intellectual or emotional concern'. Subsequent cases, however, have interpreted the phrase 'mere intellectual or emotional concern' narrowly and have been prepared to find the environmental groups have a 'special interest' in the subject matter of proceedings.

¹⁷ *ibid*

¹⁸ *ibid*, section 34AA

¹⁹ *ibid*

²⁰ *ibid*

²¹ *Prevention of Cruelty to Animals Act 1986* (Vic), section 24ZW

²² *Animal Welfare Act 2002* (WA), section 82

²³ (1980) 146 CLR 493

A recent animal law case on this issue is *Animal Liberation Ltd v Department of Environment and Conservation*²⁴. In this case, Animal Liberation applied for an injunction to restrain the aerial shooting of goats and pigs on NSW nature reserves. The Court refused the application on the basis that Animal Liberation lacked standing as it lacked the necessary 'special interest' under the general principles of standing and that the evidence did not show that there was a sufficient likelihood of infliction of cruelty upon the animals. This is in contrast to an earlier Animal Liberation case where the Court granted an injunction for a similar issue because the evidence showed a sufficient likelihood of the infliction of cruelty upon the animals concerned.

Why should you teach animal law to high school students?

Now that I have overloaded you with just some of the issues prevalent in animal law, I will conclude with some reasons as to why animal law should be taught in high school. If you're not already convinced that animal law is an important contemporary law reform issue worthy of teaching, perhaps these reasons will persuade you...

Animal law should be taught to high school students because:

- It will create better students, compassionate citizens and contributors to the greater community
- It will foster a sense of responsibility for teenagers to act upon their personal beliefs
- It will cultivate empathy for animals, and as a result, decrease animal abuse in our society
- It will encourage students to strive for a sustainable society while protecting natural resources and the environment
- It will offer an effective way to reduce and prevent violence in school and at home
- Finally, animal law is an area of the law that is in desperate need of reform. With your help, we can guide the students of today to be the driving force for better animal protection laws tomorrow

Thank you for your time today. If you require any further information, feel free to contact me.

²⁴ [2007] NSWSC 221